

Joseph W. Cotchett (36324)

Adam J. Zapala (245748)

Elizabeth T. Castillo (280502)

COTCHETT, PITRE & McCARTHY, LLP

840 Malcolm Road

Burlingame, CA 94010

Phone: (650) 697-6000

Fax: (650) 697-0577

jcotchett@cpmlegal.com

azapala@cpmlegal.com

ecastillo@cpmlegal.com

Michael P. Lehmann (77152)

Christopher L. Lebsock (184546)

Seth R. Gassman (311702)

HAUSFELD LLP

600 Montgomery Street, Suite 3200

San Francisco, CA 94111

Phone: (415) 633-1908

Fax: (415) 358-4980

mlehmann@hausfeld.com

clebsock@hausfeld.com

sgassman@hausfeld.com

Interim Co-Lead Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE TRANSPACIFIC PASSENGER
AIR TRANSPORTATION
ANTITRUST LITIGATION**

Civil Case No. 3:07-cv-05634-CRB

MDL No. 1913

This Document Relates To:

ALL ACTIONS

**~~[PROPOSED]~~ FINAL JUDGMENT OF
DISMISSAL WITH PREJUDICE AS TO
DEFENDANT EVA AIRWAYS
CORPORATION**

1 This matter has come before the Court to determine whether there is any just reason for
 2 delay of the entry of this final judgment with respect to the class action settlement with Defendant
 3 EVA Airways Corporation (“EVA”) (sometimes referred to herein as “Defendant”). The Court,
 4 having reviewed Plaintiffs’ Motion for Final Approval of Settlements with Defendants Philippine
 5 Airlines, Inc. (“PAL”), Air New Zealand Limited (“ANZ”), China Airlines, Ltd. (“CAL”), and
 6 EVA (“Final Approval Motion”) and Plaintiffs’ Motion for an Award of Attorneys’ Fees,
 7 Reimbursement of Expenses, and Class Representative Incentive Awards (ECF No. 1227-29),
 8 having held argument on said motions on September 14, 2018, and finding no just reason for
 9 delay, hereby directs entry of Judgment which shall constitute a final adjudication of this case on
 10 the merits as to members of the Settlement Class and EVA pursuant to the Settlement Agreement
 11 Between Plaintiffs and EVA (“Settlement Agreement”) (see ECF No. 1129-2):

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

13 1. The Court has jurisdiction over the subject matter of this litigation, and all actions
 14 within this litigation (collectively, “Action”) and over the parties to the Settlement Agreement,
 15 including all members of the Settlement Class and Defendant.

16 2. The following class is certified for settlement purposes only, pursuant to Federal
 17 Rule of Civil Procedure (“Rule”) 23:

18 EVA SETTLEMENT CLASS: All persons and entities that purchased passenger
 19 air transportation originating in the United States that included at least one flight
 20 segment to Asia or Oceania, from Defendants, or any predecessor, subsidiary, or
 21 affiliate thereof, at any time between January 1, 2000 and December 1, 2016.
 22 Excluded from the class are governmental entities, Defendants, former Defendants
 23 in the Action, any parent, subsidiary or affiliate thereof, and Defendants’ officers,
 24 directors, employees and immediate families.

25 3. This settlement class in the Settlement Agreement shall be referred to herein as the
 26 “Settlement Class.”

27 4. For purposes of this Order, the terms “Defendants,” “Effective Date,” “Released
 28 Claims,” “Releasing Parties,” and “Released Parties” shall be defined as set forth in the Settlement
 Agreement.

5. The Court finds the prerequisites to a class action under Rule 23(a) have been

1 satisfied for settlement purposes by each of the Settlement Classes in that:

- 2 a. There are hundreds of thousands of putative members of the Settlement
- 3 Class, making joinder of all members impracticable;
- 4 b. There are questions of fact and law that are common to all members of the
- 5 Settlement Class;
- 6 c. The claims of the Class Representatives are typical of those of the absent
- 7 members of the Settlement Class; and
- 8 d. Plaintiffs Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel Diller,
- 9 Scott Fredrick, David Kuo, Dickson Leung, Brendan Maloof, Donald
- 10 Wortman, Harley Oda, Roy Onomura, Shinsuke Kobayashi, Patricia Lee,
- 11 Nancy Kajiyama, Della Ewing Chow, James Kawaguchi, and Sharon
- 12 Christian (“Class Representatives”) have and will fairly and adequately
- 13 protect the interests of the absent members of the Settlement Class and
- 14 have retained counsel experienced in complex antitrust class action
- 15 litigation who have and will continue to adequately advance the interests
- 16 of the Settlement Class.

17 6. The Court finds that this Action may be maintained as a class action under Rule
 18 23(b)(3) for settlement because: (i) questions of fact and law common to the members of the
 19 Settlement Class predominate over any questions affecting only the claims of individual
 20 members; and (ii) a class action is superior to other available methods for the fair and efficient
 21 adjudication of this controversy.

22 7. Pursuant to Rule 23(g), the Court hereby confirms that Cotchett, Pitre &
 23 McCarthy, LLP and Hausfeld LLP are appointed as Settlement Class Counsel and that Plaintiffs
 24 Meor Adlin, Franklin Ajaye, Andrew Barton, Rachel Diller, Scott Fredrick, David Kuo, Dickson
 25 Leung, Brendan Maloof, Donald Wortman, Harley Oda, Roy Onomura, Shinsuke Kobayashi,
 26 Patricia Lee, Nancy Kajiyama, Della Ewing Chow, James Kawaguchi, and Sharon Christian are
 27 appointed to serve as Class Representatives on behalf of the Settlement Class.

28 8. The person identified in **Exhibit A** to this Final Judgment has timely and validly

1 requested exclusion from the Settlement Classes and, therefore, is excluded. Such person is not
2 included in or bound by this final judgment.

3 9. Upon the Effective Date, all Releasing Parties shall be permanently barred and
4 enjoined from instituting, commencing, prosecuting or asserting any Released Claim against any
5 of the Released Parties.

6 10. The Court has finally approved a total of four settlements between the Class
7 Representatives and PAL, ANZ, CAL, and EVA (collectively, "Settlement Agreements") in the
8 total amount of \$50,650,000.

9 11. The award of attorneys' fees, reimbursement of litigation expenses, and incentive
10 payment to a Class Representative granted by the Court in connection with the PAL, ANZ, CAL,
11 and EVA settlements shall be allocated pro-rata to each of the Settlement Agreements.

12 12. This Court hereby dismisses on the merits and with prejudice the Action against
13 Defendant, with each party to bear its own costs and attorneys' fees.

14 13. Without affecting the finality of this final judgment in any way, this Court hereby
15 retains continuing jurisdiction over: (a) implementation of the terms of the Settlement Agreement
16 and any distribution to members of the Settlement Class pursuant to further orders of this Court;
17 (b) hearing and ruling on any matters relating to the plan of allocation of the settlement proceeds;
18 and (c) all parties to the Action and Releasing Parties, for the purpose of enforcing and
19 administering the Settlement Agreement and the mutual releases and other documents
20 contemplated by, or executed in connection with the Settlement Agreement.

21
22 **IT IS SO ORDERED.**

23
24 Dated: October 11, 2018

25 
26 **THE HONORABLE CHARLES R. BREYER**
27 **UNITED STATES DISTRICT JUDGE**
28

EXHIBIT A

TRANSPACIFIC AIR PASSENGER EXCLUSION REQUESTS

| SEQ | Name1 | Name2 | Exclusion Request Timely |
|-----|---------------|-------|--------------------------|
| 1 | Elaine K Gano | | Yes |